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be below “Fully Successful” or equivalent but above “Unacceptable.”

(d) *Unacceptable performance.* An appraisal program shall provide for—

(1) Assisting employees in improving unacceptable performance at any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements; and

(2) Taking action based on unacceptable performance.

§ 430.208 Rating performance.

(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee.

(1) A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee’s performance.

(3) Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

(b) Rating of record procedures for each appraisal program shall include a method for deriving and assigning a summary level as specified in paragraph (d) of this section based on appraisal of performance on critical elements and, as applicable, non-critical elements.

(1) A Level 1 summary (“Unacceptable”) shall be assigned if and only if performance on one or more critical elements is appraised as “Unacceptable.”

(2) Consideration of non-critical elements shall not result in assigning a Level 1 summary (“Unacceptable”).

(c) The method for deriving and assigning a summary level may not limit or require the use of particular summary levels (i.e., establish a forced distribution of summary levels). However, methods used to make distinctions among employees or groups of employees such as comparing, categorizing, and ranking employees or groups on the basis of their performance may be used for purposes other than assigning a summary level including, but not

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limited to, award determinations and promotion decisions.

(d) *Summary levels.* (1) An appraisal program shall use one of the following patterns of summary levels:

Pattern	Summary level				
	1	2	3	4	5
A	X	.....	X	.....	.....
B	X	.....	X	.....	X
C	X	.....	X	X	.....
D	X	X	X	.....	.....
E	X	.....	X	X	X
F	X	X	X	.....	X
G	X	X	X	X	.....
H	X	X	X	X	X

(2) Within any of the patterns shown in paragraph (d)(1) of this section, summary levels shall comply with the following requirements:

(i) Level 1 through Level 5 are ordered categories, with Level 1 as the lowest and Level 5 as the highest;

(ii) Level 1 is “Unacceptable”;

(iii) Level 3 is “Fully Successful” or equivalent; and

(iv) Level 5 is “Outstanding” or equivalent.

(3) The term “Outstanding” shall be used only to describe a Level 5 summary.

(4) The designation of a summary level and its pattern shall be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, including, but not limited to, assigning additional retention service credit under § 351.504 of this chapter.

(5) Under the provisions of § 351.504(e) of this chapter, the number of years of additional retention service credit established for a summary level of a rating of record shall be applied in a uniform and consistent manner within a competitive area in any given reduction in force, but the number of years may vary:

(i) In different reductions in force;

(ii) In different competitive areas; and

(iii) In different summary level patterns within the same competitive area.

(e) A rating of record of “Unacceptable” (Level 1) shall be reviewed and approved by a higher level management official.

(f) The rating of record or performance rating for a disabled veteran shall

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not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

(g) When a rating of record cannot be prepared at the time specified, the appraisal period shall be extended. Once the conditions necessary to complete a rating of record have been met, a rating of record shall be prepared as soon as practicable.

(h) Each rating of record shall cover a specified appraisal period. Agencies shall not carry over a rating of record prepared for a previous appraisal period as the rating of record for a subsequent appraisal period(s) without an actual evaluation of the employee's performance during the subsequent appraisal period.

(i) When either a regular appraisal period or an extended appraisal period ends and any agency-established deadline for providing ratings of record passes or a subsequent rating of record is issued, an agency shall not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed—

(1) Within 60 days of issuance based upon an informal request by the employee;

(2) As a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a *bona fide* settlement of a formal proceeding; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

(j) A performance rating may be prepared at such other times as an appraisal program may specify for special circumstances including, but not limited to, transfers and performance on details.

[60 FR 43943, Aug. 23, 1995, as amended at 62 FR 62503, Nov. 24, 1997; 63 FR 53276, Oct. 5, 1998]

§ 430.209 Agency responsibilities.

An agency shall—

(a) Submit to OPM for approval a description of its appraisal system(s) as specified in § 430.204(b) of this subpart,

and any subsequent changes that modify any element of the agency's system(s) that is subject to a regulatory requirement in this part;

(b) Transfer the employee's most recent ratings of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency in compliance with part 293 of this chapter and instructions in the OPM Operating Manual, THE GUIDE TO PERSONNEL RECORDKEEPING, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(c) Communicate with supervisors and employees (e.g., through formal training) about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) and performance appraisal program(s) in operation in the agency;

(e) Report ratings of record data to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 430.210 OPM responsibilities.

(a) OPM shall review and approve an agency's performance appraisal system(s).

(b) OPM may evaluate the operation and application of an agency's performance appraisal system(s) and program(s).

(c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, it shall direct the agency to implement an appropriate system or program or to take other corrective action.